

Introduced by Senator Leyva**(Principal coauthor: Senator Pavley)**

(Principal coauthors: Assembly Members Burke, Gipson, and Williams)

(Coauthors: Assembly Members Chávez and Lackey)

January 4, 2016

An act to amend Sections 680, 799, 801.1, and 803 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 813, as introduced, Leyva. Sex offenses: statute of limitations.

Existing law generally requires that the prosecution of a felony sex offense be commenced within 10 years after the commission of the offense. Under existing law, prosecution for the crimes of rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, oral copulation, and sexual penetration, if committed against a victim who was under 18 years of age, may be commenced at any time prior to the victim's 40th birthday. Existing law allows prosecution of an offense punishable by death or by imprisonment for life or for life without the possibility of parole, or for the embezzlement of public money, to be commenced at any time.

This bill would allow the prosecution of rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, oral copulation, and sexual penetration, as specified, to be commenced at any time. The bill would apply to these crimes committed after January 1, 2017, and to crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 680 of the Penal Code is amended to read:

680. (a) This section shall be known as and may be cited as the “Sexual Assault Victims’ DNA Bill of Rights.”

(b) The Legislature finds and declares all of the following:

(1) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders.

(2) Existing law requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit DNA samples as a result of that arrest, charge, or adjudication.

(3) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.

(4) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention, and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.

(5) The growth of the Department of Justice’s Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.

(6) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision ~~(g)~~ (f) of Section 803.

(7) In order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required by subparagraphs (A) and (B) of paragraph (1) of subdivision ~~(g)~~ (f) of Section 803 and to ensure the longest possible statute of limitations for sex offenses, including sex offenses designated pursuant to those subparagraphs, the following should occur:

(A) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 288a, or 289 occurred, should do one of the following for any sexual assault

1 forensic evidence received by the law enforcement agency on or
2 after January 1, 2016:

3 (i) Submit sexual assault forensic evidence to the crime lab
4 within 20 days after it is booked into evidence.

5 (ii) Ensure that a rapid turnaround DNA program is in place to
6 submit forensic evidence collected from the victim of a sexual
7 assault directly from the medical facility where the victim is
8 examined to the crime lab within five days after the evidence is
9 obtained from the victim.

10 (B) The crime lab should do one of the following for any sexual
11 assault forensic evidence received by the crime lab on or after
12 January 1, 2016.

13 (i) Process sexual assault forensic evidence, create DNA profiles
14 when able, and upload qualifying DNA profiles into CODIS as
15 soon as practically possible, but no later than 120 days after initially
16 receiving the evidence.

17 (ii) Transmit the sexual assault forensic evidence to another
18 crime lab as soon as practically possible, but no later than 30 days
19 after initially receiving the evidence, for processing of the evidence
20 for the presence of DNA. If a DNA profile is created, the
21 transmitting crime lab should upload the profile into CODIS as
22 soon as practically possible, but no longer than 30 days after being
23 notified about the presence of DNA.

24 (C) This subdivision does not require a lab to test all items of
25 forensic evidence obtained in a sexual assault forensic evidence
26 examination. A lab is considered to be in compliance with the
27 guidelines of this section when representative samples of the
28 evidence are processed by the lab in an effort to detect the foreign
29 DNA of the perpetrator.

30 (D) This section does not require a DNA profile to be uploaded
31 into CODIS if the DNA profile does not meet federal guidelines
32 regarding the uploading of DNA profiles into CODIS.

33 (E) For purposes of this section, a “rapid turnaround DNA
34 program” is a program for the training of sexual assault team
35 personnel in the selection of representative samples of forensic
36 evidence from the victim to be the best evidence, based on the
37 medical evaluation and patient history, the collection and
38 preservation of that evidence, and the transfer of the evidence
39 directly from the medical facility to the crime lab, which is adopted
40 pursuant to a written agreement between the law enforcement

1 agency, the crime lab, and the medical facility where the sexual
2 assault team is based.

3 (8) For the purpose of this section, “law enforcement” means
4 the law enforcement agency with the primary responsibility for
5 investigating an alleged sexual assault.

6 (c) (1) Upon the request of a sexual assault victim, the law
7 enforcement agency investigating a violation of Section 261, 261.5,
8 262, 286, 288a, or 289 may inform the victim of the status of the
9 DNA testing of the rape kit evidence or other crime scene evidence
10 from the victim’s case. The law enforcement agency may, at its
11 discretion, require that the victim’s request be in writing. The law
12 enforcement agency may respond to the victim’s request with
13 either an oral or written communication, or by email, if an email
14 address is available. Nothing in this subdivision requires that the
15 law enforcement agency communicate with the victim or the
16 victim’s designee regarding the status of DNA testing absent a
17 specific request from the victim or the victim’s designee.

18 (2) Subject to the commitment of sufficient resources to respond
19 to requests for information, sexual assault victims have the
20 following rights:

21 (A) The right to be informed whether or not a DNA profile of
22 the assailant was obtained from the testing of the rape kit evidence
23 or other crime scene evidence from their case.

24 (B) The right to be informed whether or not the DNA profile
25 of the assailant developed from the rape kit evidence or other crime
26 scene evidence has been entered into the Department of Justice
27 Data Bank of case evidence.

28 (C) The right to be informed whether or not there is a match
29 between the DNA profile of the assailant developed from the rape
30 kit evidence or other crime scene evidence and a DNA profile
31 contained in the Department of Justice Convicted Offender DNA
32 Data Base, provided that disclosure would not impede or
33 compromise an ongoing investigation.

34 (3) This subdivision is intended to encourage law enforcement
35 agencies to notify victims of information which is in their
36 possession. It is not intended to affect the manner of or frequency
37 with which the Department of Justice provides this information to
38 law enforcement agencies.

39 (d) If the law enforcement agency does not analyze DNA
40 evidence within six months prior to the time limits established by

1 subparagraphs (A) and (B) of paragraph (1) of subdivision ~~(g)~~ (f)
2 of Section 803, a victim of a sexual assault offense specified in
3 Section 261, 261.5, 262, 286, 288a, or 289 shall be informed, either
4 orally or in writing, of that fact by the law enforcement agency.

5 (e) If the law enforcement agency intends to destroy or dispose
6 of rape kit evidence or other crime scene evidence from an
7 unsolved sexual assault case prior to the expiration of the statute
8 of limitations as set forth in Section 803, a victim of a violation
9 of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written
10 notification by the law enforcement agency of that intention.

11 (f) Written notification under subdivision (d) or (e) shall be
12 made at least 60 days prior to the destruction or disposal of the
13 rape kit evidence or other crime scene evidence from an unsolved
14 sexual assault case where the election not to analyze the DNA or
15 the destruction or disposal occurs prior to the expiration of the
16 statute of limitations specified in subdivision ~~(g)~~ (f) of Section
17 803.

18 (g) A sexual assault victim may designate a sexual assault victim
19 advocate, or other support person of the victim's choosing, to act
20 as a recipient of the above information required to be provided by
21 this section.

22 (h) It is the intent of the Legislature that a law enforcement
23 agency responsible for providing information under subdivision
24 (c) do so in a timely manner and, upon request of the victim or the
25 victim's designee, advise the victim or the victim's designee of
26 any significant changes in the information of which the law
27 enforcement agency is aware. In order to be entitled to receive
28 notice under this section, the victim or the victim's designee shall
29 keep appropriate authorities informed of the name, address,
30 telephone number, and email address of the person to whom the
31 information should be provided, and any changes of the name,
32 address, telephone number, and email address, if an email address
33 is available.

34 (i) A defendant or person accused or convicted of a crime against
35 the victim shall have no standing to object to any failure to comply
36 with this section. The failure to provide a right or notice to a sexual
37 assault victim under this section may not be used by a defendant
38 to seek to have the conviction or sentence set aside.

39 (j) The sole civil or criminal remedy available to a sexual assault
40 victim for a law enforcement agency's failure to fulfill its

responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (d) or (e).

SEC. 2. Section 799 of the Penal Code is amended to read:

799. (a) Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

(b) *Prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, may be commenced at any time. This subdivision applies to crimes that were committed on or after January 1, 2017, and to crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017.*

~~This~~

(c) *This section shall apply in any case in which the defendant was a minor at the time of the commission of the offense and the prosecuting attorney could have petitioned the court for a fitness hearing pursuant to Section 707 of the Welfare and Institutions Code.*

SEC. 3. Section 801.1 of the Penal Code is amended to read:

~~801.1. (a) (1) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under 18 years of age, may be commenced any time prior to the victim's 40th birthday.~~

~~(2) Paragraph (1) shall only apply to crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect prior to January 1, 2015, has not run as of January 1, 2015.~~

~~(b)~~

801.1. Notwithstanding any other limitation of time described in this chapter, if subdivision (a) (b) of Section 799 does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 4. Section 803 of the Penal Code is amended to read:

1 803. (a) Except as provided in this section, a limitation of time
2 prescribed in this chapter is not tolled or extended for any reason.

3 (b) No time during which prosecution of the same person for
4 the same conduct is pending in a court of this state is a part of a
5 limitation of time prescribed in this chapter.

6 (c) A limitation of time prescribed in this chapter does not
7 commence to run until the discovery of an offense described in
8 this subdivision. This subdivision applies to an offense punishable
9 by imprisonment in the state prison or imprisonment pursuant to
10 subdivision (h) of Section 1170, a material element of which is
11 fraud or breach of a fiduciary obligation, the commission of the
12 crimes of theft or embezzlement upon an elder or dependent adult,
13 or the basis of which is misconduct in office by a public officer,
14 employee, or appointee, including, but not limited to, the following
15 offenses:

16 (1) Grand theft of any type, forgery, falsification of public
17 records, or acceptance of, or asking, receiving, or agreeing to
18 receive, a bribe, by a public official or a public employee,
19 including, but not limited to, a violation of Section 68, 86, or 93.

20 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

21 (3) A violation of Section 25540, of any type, or Section 25541
22 of the Corporations Code.

23 (4) A violation of Section 1090 or 27443 of the Government
24 Code.

25 (5) Felony welfare fraud or Medi-Cal fraud in violation of
26 Section 11483 or 14107 of the Welfare and Institutions Code.

27 (6) Felony insurance fraud in violation of Section 548 or 550
28 of this code or former Section 1871.1, or Section 1871.4, of the
29 Insurance Code.

30 (7) A violation of Section 580, 581, 582, 583, or 584 of the
31 Business and Professions Code.

32 (8) A violation of Section 22430 of the Business and Professions
33 Code.

34 (9) A violation of Section 103800 of the Health and Safety
35 Code.

36 (10) A violation of Section 529a.

37 (11) A violation of subdivision (d) or (e) of Section 368.

38 (d) If the defendant is out of the state when or after the offense
39 is committed, the prosecution may be commenced as provided in
40 Section 804 within the limitations of time prescribed by this

chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

~~(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.~~

~~(2) This subdivision applies only if all of the following occur:~~

~~(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.~~

~~(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.~~

~~(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.~~

~~(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.~~

1 ~~(4) (A) In a criminal investigation involving any of the crimes~~
2 ~~listed in paragraph (1) committed against a child, when the~~
3 ~~applicable limitations period has not expired, that period shall be~~
4 ~~tolled from the time a party initiates litigation challenging a grand~~
5 ~~jury subpoena until the end of the litigation, including any~~
6 ~~associated writ or appellate proceeding, or until the final disclosure~~
7 ~~of evidence to the investigating or prosecuting agency, if that~~
8 ~~disclosure is ordered pursuant to the subpoena after the litigation.~~

9 ~~(B) Nothing in this subdivision affects the definition or~~
10 ~~applicability of any evidentiary privilege.~~

11 ~~(C) This subdivision shall not apply if a court finds that the~~
12 ~~grand jury subpoena was issued or caused to be issued in bad faith.~~

13 ~~(g)~~

14 ~~(f)~~ (1) Notwithstanding any other limitation of time described
15 in this chapter, a criminal complaint may be filed within one year
16 of the date on which the identity of the suspect is conclusively
17 established by DNA testing, if both of the following conditions
18 are met:

19 (A) The crime is one that is described in subdivision (c) of
20 Section 290.

21 (B) The offense was committed prior to January 1, 2001, and
22 biological evidence collected in connection with the offense is
23 analyzed for DNA type no later than January 1, 2004, or the offense
24 was committed on or after January 1, 2001, and biological evidence
25 collected in connection with the offense is analyzed for DNA type
26 no later than two years from the date of the offense.

27 (2) For purposes of this section, “DNA” means deoxyribonucleic
28 acid.

29 ~~(h)~~

30 (g) For any crime, the proof of which depends substantially
31 upon evidence that was seized under a warrant, but which is
32 unavailable to the prosecuting authority under the procedures
33 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
34 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
35 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
36 claims of evidentiary privilege or attorney work product, the
37 limitation of time prescribed in this chapter shall be tolled from
38 the time of the seizure until final disclosure of the evidence to the
39 prosecuting authority. Nothing in this section otherwise affects

1 the definition or applicability of any evidentiary privilege or
2 attorney work product.

3 ~~(i)~~

4 (h) Notwithstanding any other limitation of time described in
5 this chapter, a criminal complaint may be filed within one year of
6 the date on which a hidden recording is discovered related to a
7 violation of paragraph (2) or (3) of subdivision (j) of Section 647.

8 ~~(j)~~

9 (i) Notwithstanding any other limitation of time described in
10 this chapter, if a person flees the scene of an accident that caused
11 death or permanent, serious injury, as defined in subdivision (d)
12 of Section 20001 of the Vehicle Code, a criminal complaint brought
13 pursuant to paragraph (2) of subdivision (b) of Section 20001 of
14 the Vehicle Code may be filed within the applicable time period
15 described in Section 801 or 802 or one year after the person is
16 initially identified by law enforcement as a suspect in the
17 commission of the offense, whichever is later, but in no case later
18 than six years after the commission of the offense.

19 ~~(k)~~

20 (j) A limitation of time prescribed in this chapter does not
21 commence to run until the discovery of an offense involving the
22 offering or giving of a bribe to a public official or public employee,
23 including, but not limited to, a violation of Section 67, 67.5, 85,
24 92, or 165, or Section 35230 or 72530 of the Education Code.

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27 **CORRECTIONS:**

28 **Digest Text—Page 1.**

29 **Text—Page 6.**
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